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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,999

02/06/2004

Pedro Zamora, JR.

6772P001

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07/05/2006

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EXAMINER

PHILLIPS, CHARLES E

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/773,999

Applicant(s)

ZAMORA,, PEDRO

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,4 and 13-15 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,8-10,12 and 16-17 is/are rejected.
- 7) ☒ Claim(s) 7,11,18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason et al.

The seat is seen at 50, having wheels 24. The frame is seen best in Fig. 2, having longitudinal members 12 secured by cross members 10a and 10b. Certainly the longitudinal members are capable of an orientation that “follows a long dimension of the bath enclosure”. Fig. 6 provides full response to claim 2.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al as applied supra.

The “ends” i.e. the right most portion of the longitudinal members 12 are seen “disposed on an upper surface of the bath enclosure” via legs 28 and meet the claim 17 parameter of less than 15 percent, as elements 36 would comprise less than 15 percent . To provide for a capacity of 200 lbs, would have constituted an obvious design parameter and would be expected for use by an adult.

Claims 5, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al, as applied supra, in view of Herman.

Re: claims 5 and 12, the provision of the telescopically adjustable frame feature such as shown in Figs.2-3 of Herman, would have been obvious to the ordinary artisan for use in the former, as both teach bath seat accommodations. Re: claim 15, the range of adjustment would have constituted an obvious expedient of choice in design.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al in view of Weterings et al.

The former is applied as in the rejection of claim 1 supra and as seen in Fig. 5, employs "a subset of wheels " that reside in the track during use. The latter teaches a shower seat wherein the seat is storable in a non-use position as seen in Fig. 2. To provide for the use of such a seat in lieu of 50 of Mason et al would have constituted an obvious substitution of seats both shown used in a shower environment. For claim 8, see slots 21.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 8 above, and further in view of Myers.

To further provide for arm rests that are stowable such as taught by Myers at 16 would have been obvious to the ordinary artisan as same is shown employed in an identical art device.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mason et al ,as applied supra, in view of Campbell.

To provide the former with the expedient of thr brake 160 of the latter would have been obvious to the ordinary adisan as same is shown used in an identical art device.

Claims 3-4 and 13-15 are allowed.

Claims 7,11 and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Phillips whose telephone number is 571-272-4893. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Charles E. Phillips
Primary Examiner